

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

In Re: Chance Allen)
 Personal Property Account Number P-096116) Davidson County
 Tax Year 2007)

INITIAL DECISION AND ORDER DISMISSING APPEAL

Statement of the Case

On November 2, 2007, the State Board of Equalization ("State Board") received the above-styled appeal by Chance Allen.

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated (T.C.A.) §§ 67-5-1412, 67-5-1501 and 67-5-1505. The undersigned administrative judge conducted a jurisdictional hearing relative to this matter on January 17, 2008, in Nashville, Davidson County, Tennessee. Present at the hearing were Chance Allen, Kenny Venson, from the Davidson County Assessor's Office; and Attorney Jenny Hayes from the Metropolitan Legal Department.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Chance Allen & Associates is a commercial business located at 3026 Owen Drive, Unit 105, a location in Antioch and Davidson County. According to the testimony of the taxpayer, he has been in real estate business since 1970.

The threshold issue to be decided is whether or not the State Board of Equalization has the jurisdiction to hear this taxpayer's appeal. The law in Tennessee generally requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of Equalization. T.C.A. §§ 67-5-1401 & 67-5-1412 (b). A direct appeal to the State Board of Equalization is only permitted, if the assessor does not timely notify the taxpayer of a change of assessment prior to the meeting of the County Board. T.C.A. §§ 67-5-508(b)(2); 67-5-1412 (e). Nevertheless, the legislature has also provided that:

The taxpayer shall have a right to a hearing and determination to show **reasonable cause** for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the [state] board shall accept such appeal from the taxpayer up to March 1st of the year subsequent to the year in which the assessment is made (*emphasis added*).

In analyzing and reviewing T.C.A. § 67-5-1412 (e), the Assessment Appeals Commission, in interpreting this section, has held that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge

of them. It was not the intent of 'reasonable cause' provisions to waive these requirements except where the failure to meet them is **due to illness or other circumstances beyond the taxpayer's control.** (*emphasis added*), *Associated Pipeline Contractors Inc.*, (Williamson County Tax Year 1992, Assessment Appeals Commission, Aug. 11, 1994). See also *John Orovets*, (Cheatham County, Tax Year 1991, Assessment Appeals Commission, Dec. 3, 1993).

Additionally, an Attorney General's Opinion¹ and numerous decisions has thoroughly discussed and espoused the primary principles by which any analysis of jurisdictional issues are conducted. Thus for the State Board of Equalization to have jurisdiction in this appeal, the taxpayer must show that circumstances beyond his control prevented him from appealing to the Davidson County Board of Equalization. It is the taxpayer's burden to prove that he is entitled to the requested relief.

Generally, except in the event of insufficient notice of a change in classification and/or valuation, a property assessment which is not appealed to the county board of equalization during its regular annual session becomes final. See T.C.A. §§ 67-5-1401 and 67-5-1412(b). In 1991, the General Assembly amended the law by affording a taxpayer the opportunity for a hearing before the State Board to demonstrate "reasonable cause" for failure to appeal the property in question to the county board of equalization (or for failure to appeal to the State Board in a timely manner).

Mr. Allen testified that he has been in the real estate business since 1970; in 2006 he formally retired when he reached 65 but does maintain an office in the building that he visits 3 to 4 times a week. Mr. Allen owns the building with someone else but it is his responsibility to pay bills for the property, deposit rental checks and look after the building maintenance. He states he does not receive any fee or income from the service he renders and views the activities as "monitoring" his retirement investments. Mr. Allen further testified that upon receiving the Notice of Appraised Value, after communication with Mr. Dean Lewis, Appraisal Services Manager, he set up an appointment to meet with the Metropolitan Board of Equalization to discuss his contention that he was not in business and therefore did not owe the taxes. Mr. Allen missed his appointment with the County Board because either his granddaughter came into town or he forgot the time for the meeting, he is not sure which. Mr. Venson stated that it was the County's' contention that the taxpayer was "doing business" in Davidson County and therefore owed the tax.

In this case, Mr. Allen's explanation unfortunately does not establish "reasonable cause"² and, therefore, he has not met his burden of proof³.

ORDER

¹ Written October 8, 1992, at 92-62 by Office of the Attorney General

² Reasonable cause has loosely been defined as circumstances beyond the control of the taxpayer. (*citations omitted*).

³ Rules of the State Board of Equalization, Rule 0600-1-.11(1)

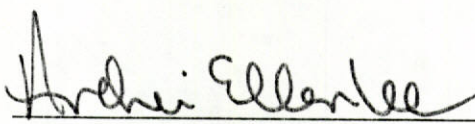
It is, therefore, ORDERED that this appeal be dismissed for lack of jurisdiction.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 13th day of March, 2008.



ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Chance Allen
Jenny Hayes, Esq.
Jo Ann North, Assessor of Property